

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

DATACELL EHF.,

Plaintiff,

v.

VISA INC., VISA EUROPE LTD., and  
MASTERCARD INCORPORATED,

Defendants.

Civil Action No. 1:14CV1658 (GBL/TCB)

**REPLY DECLARATION OF JAMES P. MASTERSON**

JAMES P. MASTERSON, pursuant to 28 U.S.C. ¶ 1746, hereby deposes and says:

1. I am Senior Vice President and Global Litigation Counsel for MasterCard International Incorporated ("MasterCard International") and, in such capacity, I am familiar with the corporate structure of MasterCard International and its related companies, including MasterCard Inc., a defendant herein. I submit this reply declaration in further support of the motion of MasterCard, Inc., pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3) and 12(b)(6) to dismiss the Complaint filed by DataCell ehf.

2. MasterCard Inc. is a publicly-held corporation and a holding company. Neither MasterCard Inc. nor MasterCard International issues debit cards or acquires debit card transactions. Nor do they contract with states concerning programs involving tax payments by cardholders or tax refunds made by states to cardholders.

3. In its memorandum in opposition to MasterCard Inc.'s Motion to Dismiss the Complaint, at p. 9, plaintiff attempts to demonstrate that MasterCard Inc. is found, or transacts

business, in Virginia by making reference to the website of the Virginia Department of Taxation and asserting the following:

With regards to MasterCard's contacts with Virginia, the company has contracted with the Virginia Department of Taxation to allow Virginia taxpayers to receive their tax refund on a prepaid MasterCard debit card. Virginia Tax Refund Debit Card, Va. Dept. of Taxation, <http://www.tax.virginia.gov/content/refund-debit-cards>.

4. The foregoing statement is demonstrably incorrect. According to the referenced website:

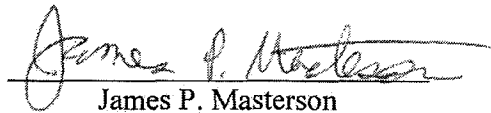
The Virginia Tax Refund Debit Card is a MasterCard® debit card that gives you easy access to your tax refund. *The Commonwealth has contracted with Xerox State and Local Solutions, Inc., to use their Go Program® to manage the Virginia Tax Refund Debit Card program.* See, e.g., Virginia Tax Refund Debit Card, What is the Virginia Tax Refund Debit Card?, available at <http://www.tax.virginia.gov/content/refund-debit-cards> (emphasis added). See Exhibit A.

The contract to which plaintiff refers was awarded by the Commonwealth of Virginia to Xerox, the program manager, and Local Solutions, Inc. Comerica Bank is the issuer of the MasterCard refund debit cards for that program. Neither Xerox nor Local Solutions, Inc. is owned by or affiliated with MasterCard Inc. or MasterCard International.

5. Moreover, the program announcement (Exhibit B) makes clear that "[t]he Debit MasterCard Way2Go Card is issued by Comerica Bank pursuant to a license from MasterCard International Incorporated" (*not* MasterCard Inc.), which license was executed in New York.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Purchase, New York  
June 15, 2015

  
James P. Masterson

Dated: June 19, 2015

Respectfully submitted,

/s/ Stephen E. Noona

Stephen E. Noona

Virginia State Bar No. 25367

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*Counsel for MasterCard Incorporated*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 19, 2015, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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